IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

DAVID HOFFMAN, Plaintiff, vs. THE RECEIVABLE MANAGEMENT SERVICES CORPORATION, Serve at: CT Corporation System 208 LaSalle St., Suite 814 Chicago, IL 60604 And DOES 1-4, Defendants.	))))))))))))))))))	 Case No. 3:17-cv-299 **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff David Hoffman ("Plaintiff"), through counsel, brings this action against Defendant The Receivable Management Services Corporation ("Defendant") and DOES 1-4 (collectively "Defendants") to secure redress against Defendants for unlawful collection practices that violated the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), and states for his Complaint:

JURISDICTION AND VENUE

1. This Court has original jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.

2. Venue is proper in this District because: a) part of the acts and transactions occurred here; and b) Defendant transacts business in this District.

PARTIES

3. Plaintiff, David Hoffman, is a natural person residing in Madison County, Illinois from whom Defendant attempted to collect an alleged debt. He is a "consumer" or a "person" affected by a violation of the FDCPA, as those terms are defined by 15 U.S.C. §§ 1692a(3), 1692d, and 1692k.

4. The debt Plaintiff allegedly owes arises out of consumer, family, and household transactions. Specifically, the alleged debt purportedly arises from services sold by Republic Services around November 2016.

5. Defendant The Receivable Management Services Corporation is a Delaware for-profit corporation with a principal business of collecting debts due to others in various states, including Illinois. Defendant is registered as a foreign entity with the Illinois Secretary of State. See record from Illinois Secretary of State, attached as **Exhibit A**.

6. DOES 1-4 are principals, agents, owners, and/or entities related to or affiliated with Defendant whose identities are currently unknown.

7. Defendant acts as a debt collector, as defined by § 1692a(6) of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, delinquent consumer debts.

8. The principal business purpose of Defendant is the collect of debts in Illinois and elsewhere in the United States, and Defendant regularly attempts to collect debt alleged to be due another.

FACTUAL ALLEGATIONS

9. On February 9, 2017, Plaintiff filed Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Illinois invoking the protections of the automatic stay pursuant to 11 U.S.C. § 362. See Case Number 17-30174-lkg at Doc. 1.

10. Schedule E/F of Plaintiff's bankruptcy petition specifically listed the alleged debt of $33.00 that Defendant had been attempting to collect. See Case Number 17-30174-lkg Doc. 1 at 31.

11. Plaintiff's bankruptcy petition correctly listed the designated address for the creditor to whom Defendant alleged the debt at issue was owed and the entity by whom Defendant was retained to collect the debt, Republic Services.

12. Among other forms of notice available to Republic Services, filing of Plaintiff's bankruptcy petition caused notice of his bankruptcy to be sent to Republic Services.

13. It is common practice within the collection industry for debt collectors to receive a digital data file or feed that is transmitted to collectors from the creditor to whom the debt is owed at the time accounts are placed with debt collectors for collection. These data files and/or data feeds include detailed information regarding debtors and their alleged debts, including whether a debtor has filed for bankruptcy, and are updated during the placement of a particular portfolio of debts with a debt collector.

14. On information and belief, Republic Services conveyed the information it had received regarding the debt at issue, including the fact that Plaintiff had filed bankruptcy, to Defendant by way of a digital data file, feed, or otherwise prior to February 24, 2017.

15. On or about February 24, 2017, Plaintiff's bankruptcy case remained pending, as did the automatic stay for the case.

16. Astoundingly, despite having knowledge by virtue of the information passed to it from Republic Services about Plaintiff's bankruptcy, Defendant nonetheless attempted to collect the debt at issue from Plaintiff by sending Plaintiff a dunning letter on or about February 24, 2017, a true and accurate copy of which is attached as **Exhibit B**.

17. Neither Defendant nor Republic Services has filed any papers with the bankruptcy court that would grant either entity a partial lifting of the automatic stay.

18. Neither Defendant nor Republic Services has taken any other action that would have lawfully permitted them to attempt to collect the alleged debt from Plaintiff or permit them to represent that they could lawful attempt to collect the debt while the automatic stay exists.

19. Defendant's collection efforts occurred with actual knowledge of Plaintiff's bankruptcy filing and of Plaintiff's representation by counsel regarding the alleged debt.

20. Plaintiff was highly confused and upset by the demands for payment by Defendant as he believed his bankruptcy filing prohibited such a payment demand.

21. Concerned about the efficacy of his bankruptcy filing as well as his understanding of the rights and protections afforded by filing his Chapter 13 bankruptcy, Plaintiff sought further assistance of counsel to ensure that Defendant's collection efforts ceased – though Defendant's efforts continued.

22. Pursuant to 15 U.S.C. § 1692c(a)(2), given that Defendant had actual knowledge that Plaintiff had an attorney and could readily ascertain such attorney's name and address, Defendant should have ceased communications with Plaintiff.

23. Further, 15 U.S.C. § 1692e states:

> False or misleading representations. A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

> . . .
>
> (2) The false representation of –
>
> > (A) the character, amount, or legal status of any debt . . . .
>
> . . .
>
> (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
>
> . . .
>
> (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

15 U.S.C §§ 1692e, (2)(A), (3), (5), & (10).

24. Through its outrageous and abusive conduct, Defendant falsely represented the collectability of the alleged debt, threatened to take collection action that could not legally be taken, and used deceptive means in attempting to collect the alleged debt from Plaintiff after Plaintiff's Chapter 13 bankruptcy filing.

25. Through its outrageous and abusive conduct, Defendant attempted to side-step Plaintiff's attorney and communicated directly with Plaintiff in order to misleadingly attempt to convince Plaintiff to make a payment.

26. Defendant's misrepresentations were material for purposes of 15 U.S.C. § 1692e. *But see Janetos v. Fulton Friedman & Gullace*, 825 F.3d 317, 324 (7th Cir. 2016) (holding that evidence of confusion or materiality unnecessary to prove violations of Section 1692g).

27. Plaintiff never entered into any agreement consenting to arbitrate disputes between himself and Defendant or waiving his right to a trial by jury.

28. All of Defendant's actions complained of herein occurred within one year of the date of this Complaint.

29. Defendant's conduct has caused Plaintiff to suffer damages including but not limited to the loss of time incurred by Plaintiff as well as attorneys' fees paid for advice regarding his situation.

30. Defendant's conduct has caused Plaintiff to suffer damages including but not limited to anger, anxiety, emotional distress, fear, and frustration.

31. Congress has found that "[a]busive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692(a).

32. Plaintiff suffered an injury-in-fact in at least one of the manners contemplated by Congress when it passed the FDCPA because of Defendant's conduct.

33. Defendant's collection communications are to be interpreted under the "unsophisticated consumer" standard. *See Gammon v. GC Services, Ltd. Partnership,* 27 F.3d 1254, 1257 (7th Cir. 1994).

COUNT I: VIOLATION OF THE FDCPA

34. Plaintiff re-alleges and incorporates by reference all of the above paragraphs.

35. In its attempts to collect the alleged debt from Plaintiff, Defendant violated the FDCPA, 15 U.S.C. § 1692 *et seq*., including but not limited to the following:

a. Engaging in debt collection efforts while Plaintiff was maintaining an active bankruptcy case, 15 U.S.C. §§ 1692c(a)(2), 1692e(2), and 1692e(10);

b. Sending a dunning letter directly to Plaintiff when it knew he was represented by counsel and either knew or could have readily ascertained such attorney's name and address in violation of 15 U.S.C. § 1692c(a)(2);

c. Falsely representing the character, amount, or legal status of the alleged debt as the subject debt was not collectible by virtue of the Automatic Stay, 15 U.S.C. § 1692e(2);

d. Falsely representing that the subject debt was collectible when it sent the dunning letter to Plaintiff by representing that the debt was collectible despite the Automatic Stay, 15 U.S.C. § 1692e(10);

e. Using oppressive, deceptive, and unfair collection tactics, including but not limited to attempting to induce Plaintiff to forgo his attorney representation though Defendant had received actual knowledge of the identity of Plaintiff's attorney and attempting to induce Plaintiff to forgo the benefit of the Automatic Stay, 15 U.S.C. § 1692d-f.

36. Each of Defendant's violations of the FDCPA renders it liable for statutory damages, costs, and reasonable attorneys' fees. *See* 15 U.S.C. § 1692k.

WHEREFORE, Plaintiff respectfully requests a judgment be entered by this Court in favor of Plaintiff, and against Defendant, finding that Defendant violated the FDCPA and awarding Plaintiff relief, including:

a. statutory damages of $1,000;

b. actual damages;

c. prejudgment and/or post-judgment interest as permitted by law;

d. costs and reasonable attorneys' fees; and

e. Such other or further relief in Plaintiff's favor as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all Counts so triable.

DATED: March 21, 2017

By: /s/ Nathan D. Sturycz________

Nathan D. Sturycz, #630261
100 N. Main St., Suite 11
Edwardsville, IL 62025
P: 877-314-3223
F: 314-667-2733
nathan@mainstreet-law.com

Attorney for Plaintiff